

Exhibit No. 2

Case No. 22-cv-00384-JSR

Declaration of Rhett O. Millsaps II In Support Of Rothschild's
Opposition To Plaintiffs' Motion For Summary Judgment

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HERMÈS INTERNATIONAL and)
HERMÈS OF PARIS INC.,)
)
Plaintiffs,)
)
vs.) No.
) 1:22-CV-00384-JSR
MASON ROTHSCHILD,)
)
Defendant.)
-----)

September 23, 2022
9:32 a.m.

Deposition of BLAKE GOPNIK, held at the
offices of Baker & Hostetler LLP, 45
Rockefeller Plaza, New York, New York,
pursuant to subpoena, before Laurie A.
Collins, a Registered Professional Reporter
and Notary Public of the State of New York.

Gopnik

A. Could you read it one more time,
please.

Q. I'll rephrase the question.

Do you agree that the connection with 11:25:31
Hermès contributed to the high value of Mason
Rothschild's works?

MR. SPRIGMAN: Objection.

A. I would say the connection to products produced by Hermès as content of his work could have contributed to it. 11:25:51

Q. Do you agree that Rothschild's art would have had far less significance if it had not crossed over into Hermès-style branding?

MR. SPRIGMAN: Objection. 11:26:21

Q. You can answer.

A. Yeah, let me just think about that.
Could you rephrase it -- could you repeat the
question, please, just to make sure --

MR. FERGUSON: Could you read back the question.

A. I want to make sure I understand it perfectly.

MR. FERGUSON: Could you read it back.

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(Record read.)                               11:26:51
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1 Gopnik

2 MR. SPRIGMAN: Objection.

3 A. I don't believe it crossed over -- I
4 don't know what crossing into Hermès style
5 branding means. 11:26:58

6 Q. I'd like to direct you to page 11 of
7 your report.

8 A. Yeah.

9 Q. Direct you to the sentence that begins
10 six lines down: Rothschild's art would have far 11:27:29
11 less significance if it had not crossed over into
12 Hermès-style branding.

13 A. I see that sentence, yes.

14 Q. You wrote that statement?

15 A. I did. 11:27:47

16 Q. And do you agree with it?

17 A. I think it's badly phrased. The phrase
18 "crossed over" should have been specified more
19 clearly by me what I meant by that.

20 Q. Okay. Looking at this in context now, 11:27:58
21 what do you mean by "crossed over"?

22 A. Engaged with, I would say, engaged with
23 as content of the art.

24 Q. What is the difference between crossing
25 over and engaging with? 11:28:12

1 Gopnik

2 MR. SPRIGMAN: Objection.

3 A. I would say that crossing over into
4 branding makes it sound as though it's a branding
5 exercise, whereas if I said engaged with or 11:28:21
6 engaged with as content it would make clear that
7 that was part of what was being discussed, if you
8 like, in the art.

9 Q. Referring to the last sentence of the
10 paragraph where you state, quote, And to be 11:28:50
11 successful as business art, Rothschild's work
12 needs to have the closest of connections with
13 visibly successful business.

14 Is the visibly successful business
15 you're referring to there Hermès? 11:29:13

16 A. It could have a connection with any
17 visibly successful business. And by "connection"
18 I mean an artistic connection.

19 Q. Do MetaBirkins have connections with
20 any visibly successful business other than Hermès? 11:29:28

21 MR. SPRIGMAN: Objection.

22 A. An artistic connection with -- I would
23 say they have a connection to the entire world of
24 deluxe handbags, including Hermès.

25 Q. The name Birkin, does that refer to the 11:29:51

1 Gopnik

2 team of people working on any of his projects,
3 including his literary projects. His texts are
4 often meant to mislead and to confuse as well.

5 Q. Do you have a belief as to whether Andy 01:26:18
6 Warhol made the statement that business art is the
7 step that comes after art?

8 A. It is present in texts that bear his
9 name.

10 I'm sorry if I'm being difficult about 01:26:30
11 this. But figuring out what Andy Warhol meant or
12 said is complicated.

13 Q. Understood.

14 Although you've spent as much time what
15 Andy Warhol meant or said as just about anyone out 01:26:43
16 there.

17 A. That's why it takes so long, because
18 it's complicated.

19 Q. And in your research have you drawn any
20 conclusions as to whether Andy Warhol made the 01:26:51
21 statement that business art comes after art?

22 A. My conclusions about that statement was
23 that it was actually component in his business art
24 practice.

25 Q. And what do you mean that it's a 01:27:11

1 Gopnik

2 component in his business art practice?

3 A. That is, Andy Warhol being a kind of a
4 trickster needed to pretend to be done with art in
5 order to become this new thing called a business 01:27:20
6 artist. So by saying it's the step that comes
7 after art, he was saying that -- well, there's two
8 things he was saying. One is that it's the latest
9 step in art, it comes after art because
10 traditional art was dead. In other words, he was 01:27:36
11 saying this is a knew avant-garde practice.

12 But he had to also present himself in
13 part as a businessperson, someone who was no
14 longer making art, in order for his business art
15 to have its maximum resonance and complexity, and 01:27:47
16 he did that reliably thereafter.

17 Q. Is making money an example of business
18 art?

19 A. Not in every case, no.

20 Q. Can making money be an example of 01:28:15
21 business art?

22 MR. SPRIGMAN: Objection.

23 A. Yes.

24 Q. In what circumstances is making money
25 an example of business art? 01:28:22

1 Gopnik

2 was using -- there were no brands in Rembrandt's
3 day, obviously. It wasn't a phenomenon in the
4 culture. But I was talking about the establishing
5 of a larger Rembrandtian enterprise that didn't 02:26:23
6 necessarily have to do with his hands.

7 So to that extent the title is correct.
8 It's not about what he touched but a larger sense
9 of a studio producing a kind of object. And those
10 objects of course function as art but they also 02:26:37
11 function as commodities in a culture -- in a
12 commercial culture.

13 Q. You refer in the article to Rembrandt,
14 Inc.; is that correct?

15 A. Facetiously, yes. 02:26:49

16 Q. What were you referring to facetiously
17 as Rembrandt, Inc.?

18 A. Well, there were no such things as
19 corporations in Rembrandt's day. I was referring
20 to metaphorically, really, to a larger studio 02:26:59
21 cultural, an enterprise, if you like, that
22 involved Rembrandt but also assistants, and one of
23 whose goal was in fact to sell the work.

24 Q. Is the brand you're referring to here
25 the name Rembrandt? 02:27:18

Gopnik

A. I am obviously speaking widely metaphorically here, and in writing this I'm sure I didn't think through it in great detail. I was trying to conjure an image.

02:29:23

But I assume that a certain kind of traditional Catholic once upon a time would have distinguished between Crowns of Thorns that were on Jesus's head at some point versus one that had been made later. But since I'm not at all convinced there was a Crown of Thorns on Jesus's head, it's an obviously very figurative way of speaking.

02:29:39

Q. And in the example you gave, the one that was made later was the counterfeit?

02:29:58

A. Yes, correct.

Q. I'd like to --

A. I want to clarify, I was speaking metaphorically.

Q. Okay.

02:30:16

I'd like to show you a document that has been previously marked as Exhibit 6.

MR. SPRIGMAN: I want one of these.

THE WITNESS: Yeah, I think they're great.

02:31:01

1 Gopnik

2 (Pause.)

3 Q. Have you seen this document before
4 today?

5 A. I've not, no. 02:31:18

6 Q. Have you seen the shirt depicted in
7 the -- the large shirt depicted on the first page
8 of this document before today?

9 A. I don't believe I ever have, no.
10 When you say "large," is that a 02:31:37
11 normal -- is not a normal shirt?

12 Q. Because there was a small blue shirt in
13 the bottom corner, I was referring to the large
14 white red shirt in the center of the page.

15 A. Got it. 02:31:59

16 Q. Are you aware that Mason Rothschild
17 sold a line of classic collegiate apparel inspired
18 T-shirts for art and fashion students?

19 MR. SPRIGMAN: Objection.

20 A. I'm not aware of that. 02:32:11

21 Q. I'd like you to assume in this question
22 that the Parsons T-shirt shown in this document
23 was created and sold by Mason Rothschild. Is this
24 T-shirt art?

25 MR. SPRIGMAN: Objection. 02:32:57

1 Gopnik

2 Q. And that this NFT is called
3 MetaBirkins.

4 Do you have an opinion whether based on
5 those facts this NFT is a work of art? 03:51:23

6 MR. SPRIGMAN: Objection.

7 A. I can never have an opinion about
8 whether something is a work of art based on such a
9 limited set of facts. It does seem to interact
10 with the other things that -- other Birkins I've 03:51:37
11 seen which in larger context do seem to be works
12 of art.

13 Q. What else would you need to know about
14 this -- what's depicted in this exhibit in order
15 to determine whether it's a work of art? 03:51:59

16 A. Well, among other things what I want to
17 do -- I guess I could do it right here. It seems
18 to be one of the other MetaBirkins covered with a
19 sheet, which would actually indicate to me more
20 rather than less that it's participating in a 03:52:15
21 larger artistic project.

22 It seems to be riffing on other items
23 from the MetaBirkins repertoire. And the pedestal
24 with a draped object on top of it very much refers
25 to statuary in the history of art. The act of 03:52:34

1 Gopnik

2 unveiling a statue is something that exists in the
3 history of art. So it seems very much to be part
4 of that discourse.

5 So, yes, the answer is I would say yes, 03:52:47
6 it does seem to be understood in an artistic
7 context.

8 Q. You talked earlier about how the
9 digital files associated with NFTs can change.

10 A. Yes, that's correct, can be changed. I 03:53:16
11 don't think they usually change spontaneously.

12 Q. Do you have any understanding as if at
13 any point since the MetaBirkin NFTs were first
14 offered for sale if the image associated with
15 MetaBirkins NFTs have changed? 03:53:40

16 MR. SPRIGMAN: Objection.

17 A. There would be no way for me to know
18 that. I would have to see the same digital file
19 at two periods of time and then do a forensic
20 analysis of whether a change had been made. 03:54:00
21 That's not part of my expertise.

22 Q. I'm going to represent to you when the
23 MetaBirkin NFTs produced by Mason Rothschild were
24 first offered for sale that the images associated
25 with the NFTs looked like the image in Exhibit 57, 03:54:20

1 Gopnik

2 There's usually -- it takes a bunch of
3 different people to finally come up with something
4 out there. I assume there's a technician to mount
5 just in charge of literally mounting them on 04:50:58
6 whatever server they're living on.

7 Q. In your report you reference that you
8 had seen a number of documents that were -- that
9 have Rothschild Bates stamps. That all appears on
10 page 3 of your report. 04:51:13

11 A. Yes.

12 Q. A number of those documents you
13 reference -- in fact, I believe most if not all of
14 them -- involve communications with Mr. Rothschild
15 and Mark Design? 04:51:22

16 A. Yes, that's right.

17 Q. And do you have an understanding of the
18 role of Mark Design in creating the MetaBirkin
19 images associated with MetaBirkin NFTs?

20 MR. SPRIGMAN: Objection. 04:51:34

21 A. Yes, his role in the production of
22 them, I'd say.

23 Q. And what was his role in production?

24 A. Well, I'd have to look at them in
25 detail. He seemed to play several different 04:51:41

1 Gopnik

2 roles. He was in a rich, collaborative
3 relationship. He was functioning as a high-level
4 studio assistant. That's what studio assistants
5 do.

04:51:53

6 Q. Is business art recognized as a genre
7 in the field of art criticism?

8 MR. SPRIGMAN: Objection.

9 A. Yes, it goes by various different
10 names. Most genres do. It's also called commerce 04:52:49
11 by artist. Some people might call it a branch of
12 relational aesthetics. But it's well recognized
13 as a movement or component in the history of
14 contemporary art. There have been exhibitions
15 about it; there are books about it. 04:53:04

16 Q. Is commerce by artists the same thing
17 as business art?

18 A. There is no specific definition of
19 business art or of commerce by artists. There are
20 elaborate -- you know, there are a set of, as it 04:53:15
21 were, Venn diagrams.

22 Different people might have slightly
23 different ways. That's true of minimalism, pop
24 art. Name any kind of art you could name, and
25 there would be different ways of thinking about it 04:53:27

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C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, LAURIE A. COLLINS, a Registered
Professional Reporter and Notary Public
within and for the State of New York, do
hereby certify:

That BLAKE GOPNIK, the witness whose
deposition is hereinbefore set forth, was
duly sworn by me and that such deposition
is a true record of the testimony given by
the witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage and that I am
in no way interested in the outcome of this
matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 27th day of September
2022.



LAURIE A. COLLINS, RPR